

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

SNOW LAKE SHORES PROPERTY
OWNERS CORPORATION,
Plaintiff

V.

NO. 3:93CV53-B-D

UNITED STATES FIDELITY
& GUARANTY,
Defendant

MEMORANDUM OPINION

This cause comes before the court upon the motion of defendant United States Fidelity and Guaranty ("USF&G") for summary judgment. The plaintiff has responded. After consideration of the record the court now rules.

On or about December 17, 1991, the Snow Lake Spillway, located in Benton County, Mississippi and owned and operated by plaintiff Snow Lake Shores Property Owners Corporation (hereinafter "Snow Lake"), collapsed while a concrete mixer was on top of the spillway making repairs to it. The plaintiff was insured through a commercial property insurance policy issued by USF&G which, in relevant part, through a supplemental declaration provided insurance:

On Water System, concrete block pump house,
located E/S of lot 233, Snow Lake Drive, Snow
Lake Shores.

On Water System, concrete block pump house,
located W/S of Lake View Drive, Snow Lake
Shores.

Contending that the reason for the collapse was the existence of leaking pipes within the interior of the spillway that caused the soil surrounding said pipes to erode thus weakening the spillway, the plaintiff reported the loss to the insurance company and subsequently made a claim for coverage, which claim was denied on April 23, 1992. USF&G now relies upon the following exclusions in denying coverage¹:

2. Property Not Covered

Covered Property does not include:

-
d. Bridges, roadways, walks, patios or other paved surfaces;
-
m. Underground pipes, flues or drains....

In this dispute, it is clear that to the language utilized in the above policy provisions and supplemental declarations may be ascribed contradictory meanings. This is clear to the court simply by review of the defendant's contentions regarding their proper construction.² Now finding that the policy is at best ambiguous

¹Without benefit of the plaintiff's theory of the case when denying the claim, USF&G relied upon exclusion only 2(d).

²"If [USF&G intended to provide coverage for the water system in its entirety] the supplemental declarations would have provided coverage for 'the water system.' Instead, the supplemental declarations specifically carve out the two pump houses 'on the water system,' with no reference to the water system in general." ("Memorandum in Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment or in the Alternative Partial Summary Judgment" p. 2). Likewise it seems not unreasonable that supplemental coverage was purchased to provide coverage "On water system" in the same manner as was provided "On one story, frame approved roof building...." The court cannot resolve the ambiguity made apparent by the various constructions placed upon the policy

with regard to the disputed meanings of the policy provisions at issue, the court must leave to the trier of fact the determination of the provisions' proper meaning, Hicks v. Quaker Oats Co., 662 F. 2d 1158, 1175 (5th Cir. 1981). Because the court discerns that a genuine issue of fact remains as to the intended scope of the policy's coverage, summary judgment accordingly must be denied.

The court must likewise deny the defendant's alternative motion for partial summary judgment on the issue of punitive damages. The plaintiff has provided some evidence that the defendant construed the language employed in the supplemental policy provisions at issue in this case in favor of the plaintiff in a predecessor policy on a previous occasion under similar circumstances and subsequently paid a similar claim. Arguing that the defendant performed an improper investigation of the claim knowing its previous position with regard to the language of the supplemental policy provisions, the plaintiff urges the court to deny the motion for summary judgment. After reviewing the material submitted by the plaintiff regarding the facts bearing upon the previous claim's payment, the court finds a genuine issue of material fact exists on this point as well, the nature and extent of the claim investigation.

provisions by the parties, any of which the court views as reasonable.

An order in conformance with this memorandum opinion will
issue.

THIS, the _____ day of August, 1994.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE